

### **REMARKS**

Claims 7-14 are all the claims pending in the application. By this Amendment, Applicant editorially amends claims 7 and 13. The amendments to claims 7 and 13 were made for reasons of precision of language and consistency, and do not narrow the literal scope of the claims and thus do not implicate an estoppel in the application of the doctrine of equivalents. In addition, Applicant adds claim 14, which is clearly supported throughout the specification.

#### **I. Preliminary Matter**

As a preliminary matter, Applicant thanks the Examiner for returning the initialed form PTO/SB/08 submitted with the Information Disclosure Statement filed on October 25, 2006.

#### **II. Summary of the Office Action**

The Examiner withdrew the previous grounds of rejection. The Examiner, however, rejected previously added claims 12 and 13. In particular, claim 12 is rejected under 35 U.S.C. § 102 and claim 13 under 35 U.S.C. § 112, second paragraph. The Examiner also objected to claims 7 and 13 for minor informalities. Claims 7-11 are allowed and claim 13 contains allowable subject matter.

#### **III. Claim Objections**

Claims 7 and 13 are objected to because of minor informalities. Applicant has revised the claims, and respectfully submits that the claims as now presented no longer include the potential informality mentioned by the Examiner. Applicant therefore respectfully requests the Examiner to withdraw the objections to claims 7 and 13.

IV. Claim Rejections under 35 U.S.C. § 112, second paragraph

The Examiner rejected claim 13 under 35 U.S.C. § 112, second paragraph. Applicant respectfully thanks the Examiner for pointing out, with particularity, the aspects of the claim thought to be indefinite. Applicant respectfully requests the Examiner to withdraw this rejection in view of the self-explanatory claim amendment being made herein.

V. Claim Rejections under 35 U.S.C. § 102(b)

Claim 12 is rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,741,905 to Fishman et al. (hereinafter “Fishman”). Applicant respectfully traverses these grounds of rejection in view of the following comments.

Independent claim 12 *inter alia* recites: “determining a type of machining device controlled by a numerical controller, wherein the type of machining device comprises one of: a two-spindle machine having a first main spindle and a sub-spindle and a one-spindle machine having a second main spindle; generating the machining program for the machining of the workpiece into the product model based on the determined type of the machining device.” The Examiner contends that claim 12 is directed to a method of creating a machining program and is anticipated by Fishman. Specifically, the Examiner contends that Fishman’s disclosure of various types of tools anticipates determining the type of machining device that is controlled by a numerical controller (*see* page 3 of the Office Action). Applicant has carefully studied Fishman’s disclosure of different machining tools and different sets of synchronization modes and Applicant respectfully submits that Fishman lacks determining the type of machining device that is controlled by a numerical controller.

Fishman discloses visual programming of simultaneous and synchronous machining operations on multi-axis lathes. The system and method of Fishman accounts for different combinations of simultaneous and synchronized lathe operations on the spindles which can utilize multiple tools. A graphic synchronization icon is assigned to each mode that preferably represents the lathe operation. Appropriate synchronous operations are grouped together in synchronization groups. In Fishman, a postprocessor processes the synchronization modes and synchronization groups, and translates them for use with computer programs understood by a particular CNC lathe (*see* Abstract).

Specifically, Fishman discloses multiple tools being used on a workpiece when more than one sub-spindle is provided and that only certain synchronization modes set is provided when the CNC (computer numerically controlled) lathes have at least two spindles as opposed to one (col. 16, lines 35 to 44). Fishman discloses that the visual method of synchronous operation apply to a minimally configured multi-axis CNC lathe regardless of whether the lathe is further designated as a Swiss-type lathe or turning center, is either a single spindle and a minimum of two tools, with at least one of the two tools working on a workpiece in the single spindle.

That is, in Fishman, for the minimally configured lathe with a single spindle and a minimum of two tools, synchronous modes can be defined as iterative synchronous modes M1, M2, M3, M4, M5, and so forth, wherein the first mode, M1, is defined as one of the two minimum tools working on a workpiece with the single spindle; the second mode, M2, is defined as both of the two minimum tools working simultaneously on the workpiece. In Fishman, if a third tool is added to the two minimum tools, then mode M3 is defined as the three tool working

simultaneous mode, and so forth, for each following mode that adds one additional simultaneously working tool. Generally, then, the n-th synchronous mode, where n is the series of integers from 1 to the total number of synchronous modes, comprises n tools working simultaneously on a workpiece with the single spindle. More complex lathe configurations are based upon one of the two above minimally configured multi-axis lathes, and can include additional spindles and/or additional tools working simultaneously on one or more workpieces (and/or providing support for one or more workpieces in other spindles) (Fig. 1d; col. 17, line 12 to col. 18, line 15).

Fishman, however does not disclose or even remotely suggest determining whether the CNC lathe is a one spindle or two spindle lathe. In other words, Fishman only discloses visually providing for user selection, various synchronization mode sets for different types of machining devices. As disclosed in Fishman, various modes and synchronization sets are provided (col. 6, line 50 to col. 7, line 55). In Fishman, however, there is no disclosure or suggestion of any determining the type of the machining device. On the contrary, since various synchronization modes are graphically displayed for user selection during the creation of the program, it would appear that the type of machining tool is preset in advance at the factory, or later by the user. That is, Fishman only discloses having various sets of synchronization modes for various types of CNC lathes, which are apparently set in advance. Therefore, the rejection is improper under 102. “[A]nticipation under § 102 can be found only when the reference discloses exactly what is claimed and that where there are differences between the reference disclosure and the claim, the

rejection must be based on § 103 which takes differences into account.” *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985); MPEP § 2131.

Furthermore, Fishman does not disclose automatic programming that will be applicable to both types of lathes. In other words, in Fishman, there is no disclosure or suggestion of determining the type of lathe and reacting accordingly on an automated basis. That is, in Fishman, the types of lathes appear to be preset in advance by the user or at the factory and various synchronization modes are graphically displayed for user selection based on this preset information. In short, Fishman does not disclose or suggest determining the type of machining device and generating the machining program based on the determined type of the machining device. On the contrary, in Fishman, the process is manual and the user selects synchronization modes based on the displayed information and the type of lathe then in use.

Therefore, “determining a type of machining device controlled by a numeric controller, wherein the type of machining device comprises one of: a two-spindle machine having a first main spindle and a sub-spindle and a one-spindle machine having a second main spindle; generating the machining program for the machining of the workpiece into the product model based on the determined type of the machining device,” as set forth in claim 12 are not disclosed in Fishman, which lacks determining the type of device and generating the machining program based on the determination. For at least these exemplary reasons, claim 12 is patentably distinguishable from Fishman. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection of claim 12.

VI. Allowable Subject Matter

Applicant thanks the Examiner for allowing claims 7-11 and for indicating that claim 13 contains allowable subject matter.

VII. New Claim

In order to provide more varied protection, Applicant adds claim 14, which is patentable by virtue of its dependency and for additional features set forth therein.

VIII. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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